



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0389

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches - General - POL - 1 - Community Caretaking Searches 1. Officers May Perform Warrantless Community Caretaking Searches Under Specific Circumstances	Not Sustained (Training Referral)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee violated her rights when he opened her apartment door and entered without her consent or a warrant and without wearing a mask.

ADMINISTRATIVE NOTE:

As discussed more fully below, after the discipline meeting in this matter, OPA changed its finding on Allegation #1 from Sustained to Not Sustained – Training Referral.

During its intake investigation, OPA identified a policy violation with respect to COVID-19 Face Covering Policy for City of Seattle Executive Department Employees, Contractors/Vendors, Volunteers and Visitors to City Facilities. On review of Witness Officer of Body Worn Video (BWV) it was conclusively determined that the Named Employee was not wearing a mask, as was required at the time. This matter was returned to the chain of command to be handled via counselling of adhering to health and safety mandates in operation.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and Witness Officer #1 (WO#1) were dispatched to a noise complaint. NE#1, accompanied by WO #1 met with the noise complainant (Reporter) who complained about his neighbor, the Complainant, playing music too loudly. NE#1 and WO#1 went to the Complainant's apartment door, which had a printed sign displayed at eye level stating in bolded, underlined, all-capital letters "DO NOT DISTURB." BWV shows NE#1 knocking on the apartment door and announcing, "Seattle Police." NE#1 knocked on the door again and the Reporter stated that he could still hear the noise inside his apartment when wearing headphones. NE#1 requested the Reporter to return to his apartment, as he did not want to cause any confrontation if the Complainant saw him there. NE#1 knocked a third time and announced, "Seattle Police Department." NE#1 knocked a fourth and fifth time without any response. NE#1 used his flashlight to knock again and announced, "Seattle Police Department." NE#1 used his flashlight to knock



again. NE#1 used his index finger to depress the door handle and opened the residence door. NE#1 is heard calling out, "Hello? Seattle Police Department." NE#1 turned on his flashlight and directed it toward the opening in the door. NE#1 then used his left foot to open the door further. NE#1 called out "Hello" while shining his flashlight into the Apartment. The Complainant sat up from her bed and looked toward the door. From outside the apartment, NE# 1 said "Hi" and that he was audio visual recording and he just wanted to know if she was ok as he had been knocking for while and that the neighbors had called about the sound. NE#1 then asked, "Would you be able to turn the music down a bit for me- could you do that for me?" Loud music continued playing and the Complainant closed the door.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.180 - Searches - General - POL - 1 - Community Caretaking Searches 1. Officers May Perform Warrantless Community Caretaking Searches Under Specific Circumstances

The Complainant alleged that NE#1 opened her closed apartment door without legal authority to do so, in violation of SPD policy.

As a general matter, an officer may only "make searched pursuant to a search warrant, unless a specific exception applies. See SPD Policy 6.180(1). SPD Policy 6.180-POL-1 states that the need to protect or preserve life, avoid serious injury or protect property in danger of damage may justify an entry that would otherwise be illegal absent an emergency.

It is important to remember that while an entry may be justified under the emergency doctrine, a warrant will generally need to be obtained prior to further investigation or seizure of evidence. The emergency doctrine and the community-caretaking exception do not require probable cause but shall be motivated solely by the perceived need to render aid or assistance. Officers will act under a community caretaking role in emergency action, not in their evidence gathering role. *Id.*

NE#1 responded to a noise complaint. Nothing in the information received suggested that this call was welfare or community caretaker related. The dispatch information included the following information, "See complaint re ongoing harassment by neighbor who is playing music through an open window...for 8 months..24 hrs a day. No weapons, Not intoxic/High." OPA reviewed the associated BWV of NE#1 where he spoke with the noise complainant who explained the issues of noise to him. No concerns or statements were expressed which would suggest that an emergency existed which would warrant accessing the apartment without a warrant.

In his report for this incident, NE#1 stated that, "I knocked and announced myself for several minutes with no answer. I pushed the door handle and found it unlocked and called inside. With the door ajar it was more apparent that sound volume was high. [The Complainant] answered my call inside and nodded in agreement when I asked if she would be able to turn the music down." No information provided in this report suggested that there was any need to render assistance or take any type of emergency action which would involve accessing this apartment without consent to do so.

When interviewed by OPA, NE#1 stated something like his written report. He stated "At this point I reached down and touch the door handle I saw that was unlocked. So, I pushed the door open slightly and yelled inside. Announced as police just to see if anybody could hear us, at that point [The Complainant] came to the door and I told her, hey would



you mind turning the music down, she gave, I think it's like a thumbs up maybe and then close the door and we left.” On review of BWV, this “thumbs up” is not visible.

When interviewed, NE#1 confirmed that he was aware that an unlocked door does not give an officer authority to enter a residence without a warrant. NE#1 stated he did not have any information that led him to believe the Complainant needed immediate assistance. When asked if there was imminent threat of substantial bodily injury or property damage in this incident NE#1 stated that there was nothing outside of the apartment that indicated there was. NE#1 stated that if the Complainant’s door had been locked, he would have “just left.” OPA noted that there was no conversation between NE#1 and WO#1 which would suggest that the call had turned into a community caretaking call. OPA asked NE#1 if he would have checked the occupant’s welfare if the door had been locked. NE#1 responded, “if we didn’t have any specific general complaint from anybody else” he would not have checked on the status of the Complainant’s welfare.

OPA is concerned that NE#1 attributed his actions of accessing the Complainant’s apartment, without consent or warrant, through a community caretaking lens. There is no evidence available from either the call received, the conversation with the reporting, or evidence at the scene to support this belief. Indeed, in his OPA interview, the NE#1 confirmed all these elements.

OPA acknowledges that—from NE#1’s perspective—the incursion on the Complainant’s privacy rights may have seemed slight and that that his other efforts to contact the Complainant were ineffective. But NE#1’s privacy rights were not the ones that were violated in this instance; the Complainant’s were. Even if NE#1 subjectively believed, as he claimed, that someone inside the apartment could need help, the facts here did not make it reasonable to believe that someone “likely” needed “assistance for health or safety concerns.” For these reasons, OPA originally recommended that this allegation be Sustained.

At the discipline meeting in this matter, a robust discussion was held relating to the policy in question and the actions of NE#1. NE#1’s Chain of Command highlighted the ambiguity of the policy relative to the actions of NE#1 in this situation. While the chain of command recognized OPA’s concerns, SPD has committed to addressing this matter promptly by way of a Training Referral and notifying OPA as to the result. Given this, OPA agreed that the most appropriate resolution of this allegation would be a Training Referral.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 6.180-POL-1(1) with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**